

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER ☒ Amended on 12/21/2022

DATE: 12/21/2022

TIME: 09:32:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Benjamin Coats

CLERK: H McIntyre

REPORTER/ERM:

CASE NO: **56-2022-00563903-CU-MC-VTA**

CASE TITLE: **City of Oxnard vs. All Persons Interested**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the December 15, 2022 Motions under submission, now rules as follows:

1. Plaintiff City of Oxnard's Motion for Summary Judgment

2. Defendants Howard Jarvis Taxpayers Association's, Ventura County Taxpayers Association's, and Aaron Starr's "Cross-Motion" for Summary Judgment

Plaintiff's requests for judicial notice as to Moving RJN Exhibits A and B are each granted. Plaintiff's request for judicial notice as to Opposition RJN Exhibit A is granted. Defendants' request for judicial notice as to Reply RJN Exhibit A is denied.

For the purposes of Plaintiff's Motion: Plaintiff's Undisputed Material Facts ("UMFs") Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, and 19 are undisputed.

UMFs Nos. 6, 16, and 17 are undisputed in part and established in part.

For the purposes of Defendant's Motion:

Defendants' Undisputed Material Facts ("UMFs") Nos. 1, 2, 3, 4, 5, 10, 13, 14, 15, 16, and 17 are undisputed.

UMF Nos. 6, and 7 are disputed and established in part.

UMF Nos. 8, 9, 11, and 12 are disputed and not established.

For the purpose of this Motion only, Plaintiffs' Additional Material Facts ("AMFs") Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 are established.

Plaintiff City of Oxnard's Motion for Summary Judgment is GRANTED. The Court finds that, as a matter of law, the subject Unfunded Liability prospectively owed by Plaintiff to CalPERS falls within the

"imposed by law" exception to the debt limit imposed by California Constitution, article XVI, section 18. As such, the Refunding Bonds and associated Trust Agreement did not need to be subject to approval by two-thirds of the City's voters as required by the constitutional debt limit.

For similar reasons, Defendants Howard Jarvis Taxpayers Association's, Ventura County Taxpayers Association's, and Aaron Starr's Cross-Motion for Summary Judgment is DENIED.

Plaintiff City of Oxnard is ordered to prepare an order for the Court's signature consistent with this ruling.

DISCUSSION

A party may move for summary judgment in any action or proceeding if it is contended the action has no merit or that there is no defense to the action or proceeding. (Code Civ. Proc., § 437c, subd. (a).) To prevail on a motion for summary judgment, the evidence submitted must show there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

"For purposes of motions for summary judgment and summary adjudication: (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2).)

"[A] moving defendant need not support his motion with affirmative evidence negating an essential element of the plaintiff's case; instead, the defendant may point to the absence of evidence in support of the plaintiff's case." (Padilla v. Rodas (2008) 160 Cal.App.4th 742, 752.) "In this method, which might be called 'evidentiary negation,' the defendant need not affirmatively prove anything about what actually occurred; it is enough to show that there is insufficient evidence of what occurred, or insufficient evidence favorable to the plaintiff, to establish a necessary element of the cause of action." (Browne v. Turner Construction Co. (2005) 127 Cal.App.4th 1334, 1340.) "However, '[t]he burden of persuasion remains' with the defendant as moving party." [Citation.] (Ibid.)

When ruling on a summary judgment, the trial court must consider all inferences from the evidence, even those contradicted by the moving party's evidence. The motion cannot succeed unless the evidence leaves no room for conflicting inferences as to material facts; the court has no power to weigh one inference against another or against other evidence. (Murillo v. Rite Stuff Food Inc. (1998) 65 Cal.App.4th 833, 841.) In determining whether the facts give rise to a triable issue of material fact, "[a]ll doubts as to whether any material, triable, issues of fact exist are to be resolved in favor of the party opposing summary judgment..." (Gold v. Weissman (2004) 114 Cal.App.4th 1195, 1198-1199.) "In other words, the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences there from must be accepted as true." (Jackson v. County of Los Angeles (1997) 60 Cal.App.4th 171, 179.) A triable issue of material fact can only be created by a conflict of evidence, not by speculation, conjecture, imagination or guess work. (Wiz Tech., Inc. v. Coopers & Lybrand LLP (2003) 106 Cal.App.4th 1, 15.) Unless the opposing party sets forth evidence that shows the existence of each element is "more likely than the nonexistence," the court must grant the motion. (Isner v. Falkenberg/Gilliam & Assocs., Inc. (2008) 160 Cal.App.4th 1393, 1398.)

If summary judgment is otherwise proper it "may not be denied on grounds of credibility," except when a material fact is the witness's state of mind and "that fact is sought to be established solely by the

[witness's] affirmation thereof." (Code Civ. Proc., § 437c, subd. (e).)

Finally, "In determining whether any triable issue of material fact exists, the trial court may, in its discretion, give great weight to admissions made in deposition and disregard contradictory and self-serving affidavits of the party." (I Benavidez v. San Jose Police Dept. (1999) 71 Cal.App.4th 853, 860.) "[A] party cannot create an issue of fact by a declaration which contradicts his prior discovery responses." (Shin v. Ahn (2007) 42 Cal.4th 482, 500, fn. 12.) Where "there is a clear and unequivocal admission by the plaintiff, himself [or herself], in his [or her] deposition... we are forced to conclude there is no substantial evidence of the existence of a triable issue of fact." (D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 21.)

Request for Judicial Notice

Evidence Code section 453 provides: "The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: ¶ (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and ¶ (b); Furnishes the court with sufficient information to enable it to take judicial notice of the matter." (Evid. Code, § 453.) "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) 'Matters that are subject to judicial notice are listed in Evidence Code sections 451 and 452. A matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute. [Citation.] [Citation]' (Herrera v. Deutsche Bank National Trust Co. (2011) 196 Cal.App.4th 1366, 1374.)

Judicial notice is a substitute for formal proof. (Sosinsky v. Grant (1992) 6 Cal.App.4th 1548, 1564.) Its consequence is to establish a fact as indisputably true, eliminating the need for further proof. (Ibid; see Post v. Prati (1979) 90 Cal.App.3d 626, 633; Mozzetti v. City of Brisbane (1977) 67 Cal.App.3d 565, 578 [purpose of judicial notice is to expedite production and introduction of otherwise admissible evidence].) Hence, the general rule dictates that a matter is subject to judicial notice only if it is reasonably beyond dispute.

In connection with their MSJ, Defendants have requested that the Court take judicial notice of the following: (1) a copy of the February 2021 statement of the Government Finance Officers Association (GFOA) entitled "GFOA Committees Affirm Guidance That State and Local Governments Should Not Issue Pension Obligation Bonds" and obtained at <https://www.gfoa.org/materials/pension-obligation-bonds-february-release> (Exh. A); and (2) a copy of a June 2020 article by the GFOA entitled "Pension Obligation Bonds: Yes or No?" and obtained at https://gfoaorg.cdn.prismic.io/gfoaorg/7b397130-6318-4e16-993b-b8a478d81733_GFR_04-2020-POB.pdf (Exh. B).

Defendants have not cited to any authorities for taking judicial notice of publications by the GFOA, which is not a governmental organization. Nevertheless, the Court may analogize these documents to newspaper articles. "With respect to...newspaper articles and historical articles and brochures that are not recorded documents...it is arguable whether they clearly fall within the provisions of Evidence Code section 452, subdivision (h), as "[f]acts and propositions that are not reasonably subject to dispute" that are 'capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.' [...] Under Evidence Code section 452, subdivision (h), it is discretionary with this court whether to take judicial notice of such historical articles, and in any case, we would not take judicial notice of the truth of those views." (Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC (2015) 234 Cal.App.4th 166, 186.)

The Court exercises its discretion in taking judicial notice of the existence of these two publications but declines to take judicial notice of the truth of the matters asserted therein.

In connection with its opposition, Plaintiff has requested that the Court take judicial notice of a copy of the Proposed/Tentative Statement of Decision Following Court Trial filed in Santa Clara Superior Court

case no. 21CV391517 (Exh. A).

Evidence Code section 452, subdivision (d) provides that the Court may take judicial notice of the "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." (Evid. Code, § 452, subd. (d); see Day v. Sharp (1975) 50 Cal.App.3d 904, 914 ["[A] court Cannot take judicial notice of Hearsay allegations as being true, just because they are part of a court record or file. A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments."].) The Court grants the request for judicial notice of this court document but again declines to take judicial notice of the truth of the matters asserted therein.

Finally, in connection with its reply, Defendant has requested that the Court take judicial notice of the certified transcript of August 22, 2022 in Santa Clara County Superior Court case no. 21CV391517. (Reply RJN Exh. A.) The Court may note that "[a]lthough the existence of statements contained in a deposition transcript filed as part of the court record can be judicially noticed, their truth is not subject to judicial notice." (Garcia v. Sterling (1985) 176 Cal.App.3d 17, 22.) This deposition transcript is not properly subject to judicial notice.

Overview of the Validation Statutes

"The validation statutes provide a procedure by which a public agency may determine the validity of certain acts. The public agency may bring a validating proceeding in superior court within 60 days of 'the existence of any matter which under any other law is authorized to be determined pursuant to [the validation statutes].' (§ 860.) Such an action is 'in the nature of a proceeding in rem.' (Ibid.) And where the public agency does not initiate a validating proceeding under section 860, 'any interested person may bring an action within the time and in the court specified by Section 860 to determine the validity of such matter.' (§ 863.) The interested person must bring a validating proceeding within 60 days: 'No contest except by the public agency or its officer or agent of any thing or matter under this chapter shall be made other than within the time and the manner herein specified.' (§ 869.) Thus, insofar as section 863 provides that an interested person 'may' bring a validating proceeding, the statute 'seems innocuous enough ... section 869 says he must do so or be forever barred from contesting the validity of the agency's action in a court of law.' [Citation.]" (Kaatz v. City of Seaside (2006) 143 Cal.App.4th 13, 29-30.)

"Hence, under the validation statutes, the public agency may initiate a proceeding to establish the validity of its act. Alternatively, the agency may do nothing, in which case the act will become immune from attack if no interested person brings a proceeding to establish the act's validity or invalidity within 60 days. [Citation.] As the Supreme Court has observed: '[A]n agency may indirectly but effectively 'validate' its action by doing nothing to validate it; unless an 'interested person' brings an action of his own under section 863 within the 60-day period, the agency's action will become immune from attack whether it is legally valid or not.... Thus a statute which begins by providing a remedy to be pursued by public agencies, ... concludes by making it unnecessary for such agencies to do anything at all, and the incidental or derivative remedy of an 'interested person' turns out to be controlling. This is truly a case of the tail wagging the dog.' [Citation.]" (Kaatz, supra, 143 Cal.App.4th at p. 30.)

"The validation statutes do 'not specify the matters to which [they] appl[y]; rather, [their] procedures apply to 'any matter which under any other law is authorized to be determined pursuant to this chapter.' (§ 860.)' [Citation.] Thus, we look to other statutes to determine the scope of public agency actions that are subject to validation under sections 860 through 870." (Kaatz, supra, 143 Cal.App.4th at p. 31.)

Plaintiff here has specifically brought the present validation action pursuant to Government Code sections 53511 and 53589.5.

Section 53511 provides that "[a] local agency may bring an action to determine the validity of its bonds,

warrants, contracts, obligations or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure." (Gov. Code, § 53511, subd. (a).) "A local agency that issues bonds, notes, or other obligations the proceeds of which are to be used to purchase, or to make loans evidenced or secured by, the bonds, warrants, contracts, obligations, or evidences of indebtedness of other local agencies, may bring a single action in the superior court of the county in which that local agency is located to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness of the other local agencies, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure." (Id., subd. (b).) "Although 'contracts' could be read to reach all contracts, the courts have defined it by reference to the clause in which it has been used, and thus to reach only those contracts 'that are in the nature of, or directly relate to a public agency's bonds, warrants or other evidences of indebtedness.' [Citations.] At times, courts have read section 53511 also to reach contracts that are "inextricably bound up" with an agency's bonds, warrants or other evidence of indebtedness, even if those contracts do not directly deal with those topics. [Citations.]" (Santa Clarita Organization for Planning & Environment v. Castaic Lake Water Agency (2016) 1 Cal.App.5th 1084, 1099.)

Section 53589.5 provides that "[a]n action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of refunding bonds under this article, and the legality and validity of all proceedings previously taken or proposed to be taken in a resolution or ordinance adopted by the local agency for the authorization, issuance, sale, and delivery of the bonds, for entering into any credit reimbursement or other agreement in connection therewith, for the use of the proceeds of the bonds, and for the payment of the principal of, and interest on, the bonds." (Gov. Code, § 53589.5.)

"A validation action implements important policy considerations. "[A] central theme in the validating procedures is speedy determination of the validity of the public agency's action.' [Citation.] 'The text of [Code of Civil Procedure] section 870 and cases which have interpreted the validation statutes have placed great importance on the need for a single dispositive final judgment.' [Citation.] The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to settle promptly all questions about the validity of its action.' [Citation.] [¶] ... [¶] A key objective of a validation action is to limit the extent to which delay due to litigation may impair a public agency's ability to operate financially. [Citation.]' [Citation.] A validation action also serves to fulfill the important objective of 'facilitat[ing] a public agency's financial transactions with third parties by quickly affirming their legality.' [Citation.] In particular, "[t]he fact that litigation may be pending or forthcoming drastically affects the marketability of public bonds [.]" [Citation.]" (Cal. Commerce Casino, Inc. v. Schwarzenegger (2007) 146 Cal.App.4th 1406, 1420-1421.)

The subject CalPERS reimbursement debt and subsequent bonds

Plaintiff participates in the California Public Employees' Retirement System ("CalPERS") under Government Code §§ 20000 through 21500 (the "Retirement Law") pursuant to a contract with the Board of Administration of CalPERS (the "Retirement Board"), effective February 2, 1952, with subsequent amendments (the "CalPERS Contract").

To fund retirement benefits for Retirement Plan members, the City is required to make certain payments mandated by the Retirement Law and the CalPERS Contract. These required payments include periodic payments over a term to amortize the Plaintiff's "unfunded accrued liability" (the "Unfunded Liability") under the Retirement Law and the CalPERS Contract. (Gov. Code § 20812.) The CalPERS Actuary's most recent actuarial valuation reports for each of the sub-components of the Retirement Plans indicate a total Unfunded Liability under Plaintiff's Retirement Plans of \$219,593,414 as of June 30, 2021.

A portion of the benefits under the CalPERS Contract reflect benefits given to fire and police officers granted under the original CalPERS Contract that was approved by the voters of the City in an election held on October 23, 1951 (the "1951 Benefits"). Since July 22, 1952, the Plaintiff's City Council generally

has annually set an ad valorem property tax rate for the purpose of providing revenue to pay all or a portion of the pension funding obligation under the CalPERS Contract attributable to the 1951 Benefits. Plaintiff annually establishes the property tax rate for the fiscal year; the City Council reports the rate to the Ventura County Auditor-Controller, who places the ad valorem property tax (the "Retirement Tax") on the County's property tax roll.

On March 1, 2022, the City Council adopted Resolution No. 15,543 (the "Resolution"), which authorizes issuance and sale of pension obligation bonds (the "Refunding Bonds"); authorizes the assignment and pledge of revenues from the Retirement Tax to pay certain Refunding Bonds relating to the 1951 Benefits; and authorizes the execution and delivery of a trust agreement (the "Trust Agreement") under which all Refunding Bonds would be issued. The Resolution authorizes City officers to execute and deliver the Refunding Bonds, the Trust Agreement and take related actions for purposes of eventually issuing the Refunding Bonds.

The Refunding Bonds are to be payable from all legally available funds of the Plaintiff, including revenues from the Retirement Tax, as applicable, pursuant to the Bond Law. (See Rev. & Tax. Code, § 96.31, subd. (a)(4).) In the Trust Agreement, Plaintiff will covenant that its levy of the Retirement Tax rate will not exceed maximum rate imposed on the Retirement Tax under section 96.31 of the Revenue and Taxation Code. The Retirement Tax only supports the 1951 Benefits for police and fire safety employees, not for other miscellaneous employees).

Validity of the Refunding Bonds

The central dispute in this action is whether the Refunding Bonds issued by Plaintiff required voter approval under Article XVI, section 18 of the California Constitution. Defendants have taken issue with the fact that Plaintiff is asking for permission to use the Refunding Bonds to prepay all estimated future years' payments to CalPERS even though, according to Defendants, CalPERS makes no such demand. Defendants believe that because the City wishes to required payment by issuing bonds to prepay future estimated liabilities, voters have a constitutional right to approve or disapprove.

A. The local debt limit

"The California Constitution contains two general constraints on borrowing to finance governmental activities. Article XVI, section 18 of the California Constitution (sometimes referred to as the local debt limit) applies to local governments. (Further references to articles are to the California Constitution.) It reads in relevant part: 'No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose...' The counterpart for state government is article XVI, section 1." (Taxpayers for Improving Public Safety v. Schwarzenegger (2009) 172 Cal.App.4th 749, 760-761.) "The underlying purpose of these debt limits is to force government to operate within its means. [Citations.] Hence, they have been viewed more accurately as balanced budget requirements than debt limits." (Id. at p. 761.)

"Consistent with the underlying purpose of the constitutional debt limits, the courts have carved out a number of 'exceptions.' Although, in each instance, the so-called 'exception' is fundamentally a recognition that the transaction or legislation in question does not create a 'debt' owed by the governmental entity within the meaning of the debt limit provisions, but is instead a payment arrangement that falls entirely outside of those provisions, we will refer to them as 'exceptions' as others have done before us. In any event, as a general rule, such a debt subject to debt limitations arises only if a financial obligation is created that must be satisfied from the governmental entity's general funds or taxing power." (Id. at p. 762.)

"[One] exception to the constitutional debt limits has been recognized where the governmental entity

enters into a contingent obligation. 'A sum payable upon a contingency is not a debt, nor does it become a debt until the contingency happens.' [Citation.] This contingency exception has been applied to uphold multiyear contracts, such as leases, where the governmental entity agrees to pay sums in succeeding periods in exchange for property, goods, or services to be provided during those periods. ([Citation.] Each periodic payment is viewed as a contemporaneous payment for the property, goods, or services received rather than an installment payment on a long-term debt." (Id. at pp. 762-763.) "[Another] exception to the constitutional debt limits has been recognized for obligations imposed by law." (Id. at p. 764.)

B. Exception for obligations imposed by law

Plaintiff argues that its obligations to fund retirement benefits are obligations imposed by the Retirement Law and, thus, exempt from the local debt limit.

In 1930, "the State Constitution was amended to empower the Legislature to create a state employee retirement system [...] [Citation.] In 1931, 'the Legislature established the State Employees' Retirement System, presently known as [the Public Employees Retirement System or] PERS. [Citations.] The system included a fund derived from mandatory employee payroll contributions (member contributions), contributions of the state, and earnings on the investment of the fund. [Citations.]" [Citation.] A board of administration (the PERS Board) was created to administer the system." (State ex rel. Pension Obligation Bond Com. v. All Persons Interested etc. (2007) 152 Cal.App.4th 1386, 1391.)

"By 1947, PERS had become a defined benefit plan, with fixed benefits for pensioners and actuarially determined, fixed contribution rates for employers. [Citation.] By 1968, The Legislature had empowered the PERS Board to adjust the fixed rates of employer contributions in accordance with updated actuarial valuations [Citation.]" (Ibid.) "Beginning in 1982, both the Governor and the Legislature began devising means of balancing the state budget by limiting or delaying the state's employer contribution obligations to PERS." (Ibid.) "In November 1992, the voters adopted Proposition 162, the California Pension Protection Act of 1992, which, among other things, added to article XVI, section 17 'the requirement that the PERS Board have 'sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.' [Citation.]" (Id. at p. 1392.)

"In 1996, the Legislature repealed and reenacted the Retirement Law. [Citations.] Chapter 9 of the current law addresses employer contributions." (Ibid.) "In each fiscal year, the State pays to PERS the employer contribution as determined by the PERS Board. Appropriations are made from the General Fund on a quarterly basis to cover the employer's contribution [citation] except where the employee is compensated from a special fund, in which case the employer's contribution is taken from that special fund [citation]." (Id. at p. 1393.)

The relevant Retirement Law statutes are Government Code sections 20022, 20532, 20806, 20812, 20814, and 20831.

Section 20022 provides that a "[c]ontracting agency' means any public agency that has elected to have all or any part of its employees become members of this system and that has contracted with the board for that purpose." (Gov. Code, § 20022.)

Section 20532 provides that "[t]he contracting agency shall make the contribution for its employees in this system, as recommended by the actuary and approved by the board and certified by it to the contracting agency." (Gov. Code, § 20532.) "The contribution may consist of fixed sums, percentages of compensation of contract members, or both, and shall be paid to this system as provided in the contract." (Ibid.) "The actual contribution is subject to adjustment by the board as may be necessary on account of any additional prior service credits that the contracting agency may desire to provide for its employees in this system or on account of experience under this system as determined by periodical investigation, valuation and determination required to be made by the board, including adjustments

determined as necessary by the board, even after the total contributions determined, plus subsequent adjustments, if any, have been completely paid." (Ibid.)

Section 20806 provides that "[e]ach contracting agency...that is an employer for purposes of this chapter shall make contributions in addition to those otherwise specified in this chapter in amounts to be fixed and determined by the board on account of unpaid liability for prior service and on account of liability for benefits under Sections 21624 through 21628, inclusive, and 21571 and benefits provided local safety members. Payments shall be under any arrangement as may be agreed to by the board." (Gov. Code, § 20806.)

Section 20812 provides that "the board may adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations for current and prior service for the purpose of determining employer contribution rates for contracting agencies and school employers. The board shall approve new amortization periods based upon requests from contracting agencies or school employers that can demonstrate a financial necessity. The board may deny a request when the request would subject the fund to an unsound financial risk." (Gov. Code, § 20812.)

Section 20814 provides that "[t]he employer contribution rates for all other public employers under this system shall be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change of rate." (Gov. Code, § 20814, subd. (b).)

Finally, Section 20831 provides that "neither the state, any school employer, nor any contracting agency shall fail or refuse to pay the employers' contribution required by this chapter or to pay the employers' contributions required by this chapter within the applicable time limitations." (Gov. Code, § 20831.)

C. Plaintiff's cases

In support of its argument that the subject Refunding Bonds constitute obligations imposed by law, Plaintiff has principally cited to the cases *Carman v. Alvord* (1982) 31 Cal.3d 318 and *Compton Community College etc. Teachers v. Compton Community College District* (1985) 165 Cal.App.3d 82.

In *Carman*, supra, 31 Cal.3d, the voters, in 1948, approved a measure for the City of San Gabriel to 'fully participate' in the state sponsored retirement system, making the city's employees 'members' of the system. (Id. at p. 322, fn. 2.) The city was empowered to "'levy and collect annually, as contemplated in [the statewide statute], a special tax sufficient to raise the amount estimated by [the City] Council to be required to meet..." the city's obligations to the retirement system. (Id. at p. 322.) After Proposition 13 was passed, the plaintiff, a local landowner, challenged the levy of a tax in excess of the 1 percent maximum to fund the amount due to CalPERS. On appeal, the court found the tax was permissible because it was an "[i]ndebtedness approved by the voters prior to July 1, 1978," i.e., California Constitution, article XIII A, section 1, subdivision (b).

The Court in *Carman* explained that a contracting agency has a duty to pay pension funds as promised and earned. (*Carman*, supra, 31 Cal.3d at p. 325.) The Court discussed: "By entering public service an employee obtains a vested contractual right to earn a pension on terms substantially equivalent to those then offered by the employer. [Citations.] On the employee's retirement, after he has fulfilled pension conditions, an immediate obligation arises to pay benefits earned. Earned benefits are deferred compensation [citation] and, when payable, become a fixed indebtedness of the employer." (Ibid.) "Pensions are a governmental obligation of great importance." (Id. at p. 325, fn. 4.)

The court determined that subdivision (b) did not "exempt only traditional, fixed, long-term debt for borrowed funds" as the plaintiff had asserted. (*Carman*, supra, 31 Cal.3d at pp. 325, 327.) Nor was it restricted to "indebtedness which was fixed and certain when approved." (Id. at p. 326, fn. 6.) Rather, the court noted that subdivision (b) "speaks only of the time of approval, not the time an indebtedness is incurred or accrues." (Ibid.) However, when the "voters empowered [the city] to offer the pension plan

provided by PERS[,] they authorized the special tax set by statute insofar as necessary to fund the obligations. [Citation.]" (Id. at pp. 325-326.) In short, Carman upheld "a levy for a narrowly defined purpose that necessarily would give rise to payment obligations in the future." (Ibid.)

The Carman Court continued to find that "the payments made by the city to PERS were a debt within the meaning of subdivision (b), defining the term "any indebtedness" in that provision broadly so as to encompass "all obligations to pay money." (Id. at p. 328.) The Court explained: "'The term 'indebtedness' has no rigid or fixed meaning, but rather must be construed in every case in accord with its context.' [Citations.] It can include all financial obligations arising from contract...and it encompasses 'obligations which are yet to become due as [well as] those which are already matured.'" (Id. at pp. 326-327.) The Carman Court's holding was extended to include not only employees who had entered employment in reliance on the pension provisions and who had served the city on that basis before 1978, but also those hired after article XIII A became effective, on the ground that the voters had approved the indebtedness and had "obviously understood that subsequently hired employees too would be covered." (Id. at p. 333, fn. 11.)

In Compton Community College, supra, 165 Cal.App.3d, the Compton Community College District struggled to honor its contractual salary obligations to its union-represented teachers. During Summer and Fall 1982 the district, at a special board meeting, adopted a resolution authorizing a one-time, lump-sum bonus payment to eligible employees in connection with the retroactive emoluments approved by the board earlier in the year. These bonuses were to come out of 1982-1983 school year income. However, the County Counsel's office issued an opinion stating that the bonuses would violate the debt limitation found in article XVI, section 18 of the California Constitution. (Id. at p. 85.) In spite of this opinion, the district board ordered \$350,000 in warrants to be issued to those employees who were owed retroactive salary payments. The County Superintendent, however, issued a notice of non-approval rejecting the district's warrants based on article XVI, section 18 of the California Constitution." (Id. at p. 86.) The district then began contending it could not afford to reimburse its teachers for the retroactive salary raises it failed to pay during 1981-1982. In response, the teachers' union filed a petition for peremptory writ of mandate seeking an order requiring the respondents to pay the full compensation the district had contracted to do in 1981-1982. The trial court denied this petition. The Second District Court of Appeal reversed. (Ibid.)

The court went on to find that the constitution debt limit did not prevent the district from making the retroactive salary payments. The court focused on a certain exception to the debt limit: the "imposed by law" exception. The court explained that "[i]t is not enough the Legislature enacts a law imposing a 'general' duty on local government to perform some function. Only if the law imposes a 'specific' duty to expend its money on that function will those expenditures be exempt from the constitutional debt limitation." (Id. at p. 91.) "[T]he duty imposed on local government must be truly mandatory." (Id. at p. 92.)

The court explained that California law imposed a specific duty on the district to employ teachers and not to reduce their compensation during the contract year. The court looked to provisions in the California Constitution making "education one of the highest priorities of state and local government" as well as specific Education Code provisions requiring each district to employ and assign instructors and other personnel as well as to set salary schedules after engaging in good faith bargaining about wages, hours of employment, and other terms and conditions of employment. (Ibid.) Accordingly, the court found that the district "had a specific duty to employ the teachers needed to provide education to its citizens and to pay them according to a set salary schedule." (Id. at p. 93.) The court explained that "[h]ere the District had a statutory duty to provide education and to employ those needed to carry out that function." (Ibid.) "[T]he District is required to hire its own employees to provide the instruction-rather than perhaps contracting with private firms to do so. Moreover, the function of teaching can only be done by teachers who meet certain state-mandated qualifications." (Ibid.)

The court further rejected that argument that the district "had no specific duty to arrive at any particular

salary schedule during collective bargaining negotiations" and that "[t]his was a matter within the District's discretion." (Ibid.) The court explained: "this argument assumes the law must not only impose a duty to incur an expenditure but must also set the exact amount of that expenditure. Although this construction finds some support in certain language in *Lewis v. Widber*, supra, subsequent cases have removed this restriction on the 'imposed by law' exception to the constitutional debt limit." (Ibid.)

D. Defendants' cases

Defendants have cited the cases *State ex rel. Pension Obligation Bond Committee v. All Persons Interested* etc. (2007) 152 Cal.App.4th 1386, *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, and *City of Pasadena v. McAllaster* (1928) 204 Cal. 267.

In *Pension Obligation*, supra, 152 Cal.App.4th, the State, through its Pension Obligation Bond Committee, brought a validation action to obtain a declaration of validity of a resolution authorizing the issuance of \$960 million in bonds to pay a portion of the State's employer contribution to CalPERS for fiscal year 2004-2005. The Fullerton Association of Concerned Taxpayers filed an answer to the complaint. The trial court concluded that the pension obligation is one imposed by the State on itself and, therefore, does not fall within an exception for obligations imposed by law. The trial court then entered judgment against the Pension Obligation Bond Committee. The Third District Court of Appeal upheld the judgment, stating: "We agree the bonds are not exempt from the constitutional debt limit and affirm the judgment." (Id. at p. 1390.)

The Committee contended that "because the amount of the State's contribution to PERS is within the sole discretion of the PERS Board, and the Legislature has no choice but to fund at the level dictated by the board, 'the obligation to pay the pension obligation at issue in this action constitutes an obligation imposed by law.'" (Id. at p. 1401.) The court, however, found that "[n]othing in the [California Pension Protection Act of 1992] requires the Legislature to fund the Retirement System. It does no more than grant the PERS Board, and similar retirement boards, power to control the assets invested in the retirement system. Although the provisions give the PERS Board actuarial authority, they do not require funding in accordance with the board's calculations. That requirement comes from section 20790 et sequitur." (Id. at p. 1405.) "As concluded by the trial court, the obligation to fund pension benefits is essentially an obligation imposed by the Legislature on itself. This is not changed by the fact that the obligation has existed for over 75 years. The Legislature retains the power to eliminate or amend the obligation, as it did in the 2004 pension reform legislation described above." (Ibid.)

The court continued to explain: "The fact that the state has a contractual obligation to maintain pension benefits does not mean the obligation is one imposed on the state by law. Rather, as explained above, it is an obligation the Legislature has imposed on itself." (Id. at p. 1406.) "Furthermore, the continuing obligation to fund such benefits is subject to additional legislative action. [Citation.] As such, it is a matter at least in part subject to legislative discretion and not one imposed by law." (Id. at p. 1407.) In conclusion, the court found that because the amount of the bonds proposed to be issued under the Bond Act exceeded the threshold of article XVI, section 1, those bonds were required to be approved by a two-thirds vote of the Legislature or a majority vote of the people, as required by that constitutional provision. (Ibid.)

In *County of Orange*, supra, 192 Cal.App.4th, the County of Orange filed an action naming the Orange County Employees' Retirement System (OCERS) Board and the Association of Orange County Deputy Sheriffs (AOCDS) as defendants. "The first amended complaint alleged in its first cause of action that the 2001 action by the prior board of supervisors adopting the past service portion of the enhanced 3% at 50 retirement formula violated the California Constitution's municipal debt limitation in article XVI, section 18, subdivision (a), because without voter approval, the resolution created an immediately incurred and legally enforceable debt or liability of more than \$99 million, which exceeded the County's available unappropriated funds for the year." (Id. at p. 31.) The defendants filed a motion for judgment on the pleadings, which the trial court granted. Ultimately, judgment was granted against the County,

and the County appealed. (Id. at p. 32.)

"The County's second amended complaint allege[d] that in 2001, when the board of supervisors approved the past service portion of the enhanced 3% at 50 retirement formula for AOCDS members, the board created a '\$100 million long-term liability (that has since grown to approximately \$187 million)....' The County alleges that the board's action violated article XVI, section 18, subdivision (a), which it characterizes as a 'balanced budget' requirement,' because the \$100 million was an immediately enforceable debt incurred in a year in which the County's unappropriated revenue (for fiscal year 2002) totaled less than \$99 million, and the County did not hold the required election to obtain voter approval." (Id. at p. 33.) AOCDS, on the other hand, argued that "that the \$100 million amount which the County on this appeal characterizes as a 'debt' is not an 'indebtedness' or 'liability' ' within the meaning of article XVI, section 18, subdivision (a). Instead, it is an actuarial calculation of what the County's obligations are likely to be in the future for the past service portion of the 3% at 50 retirement formula for AOCDS members. As an actuarial projection, the \$100 million did not belong on the liability side of the County's balance sheet in the 2002 fiscal year, and it thus escapes the application of the municipal debt limitation." (Ibid.)

The Second District Court of appeal in County of Orange explained that unfunded liability represents "the difference between actuarial accrued liability and the valuation assets in a fund." [Citation.] "Most retirement systems have [unfunded liability]. They arise each time new benefits are added and each time an actuarial loss is realized. [¶] ... [unfunded liability] does not represent a debt that is payable today." [Citation.]" (Id. at p. 34.) The unfunded liability represents "an estimate based on a series of assumptions that operate on demographic data of [the County Retirement System's] membership." (Id. at p. 35.) "Given the multiple assumptions about the future involved in calculating the [County Retirement System's unfunded liability] (investment returns, pay increases, marital status at retirement, retiree and beneficiary life expectancies, salary increases, contribution rates, and inflation), it is clear that the [unfunded liability] is a highly variable amount, which may or may not prove accurate depending upon actual future events and experience." (Ibid.)

In deciding whether the constitutional debt limit applied, the court looked to a 1982 Attorney General Opinion, whereby it was concluded that "the state retirement system's 'unfunded liability' did not violate the state debt limitation provision. The Attorney General explained that '[d]etermining how much income to the [state] Fund is necessary to pay all benefits as they become due is the business of actuaries. Actuaries predict the future financial operation of an insurance or retirement system by making certain assumptions regarding the variables in the system.'" (65 Ops. Cal. Atty. Gen. 571, 572 (1982).)" (Id. at p. 36.) The court explained: "We find the analysis in the 1982 opinion persuasive, and that analysis supports the conclusion that [an unfunded liability] such as the \$100 million cited by the County in this case is an actuarial estimate projecting the impact of a change in a benefit plan, rather than a legally enforceable obligation measured at the time of the County's 2001 resolution approving the 3% at 50 formula." (Id. at pp. 36-37.)

Relying on the fact that in the subject unfunded liability was not required to be reported on the County's balance sheet, the court concluded: "We affirm the trial court's grant of judgment on the pleadings on the municipal debt limitation cause of action in the second amended complaint." (Id. at p. 39.)

The facts and holding of *City of Pasadena v. McAllaster*, supra, 204 Cal. were summarized well by the appellate court in *City of Saratoga v. Huff* (1972) 24 Cal.App.3d 978 as follows:

In *City of Pasadena v. McAllaster* (1928) 204 Cal. 267, [] the proceedings involved the provisions of the Acquisition and Improvement Act of 1925 (Stats.1925, ch. 419, p. 849, repealed Stats.1933, ch. 346, p. 948). This act provided that assessments could be levied against public property, and that the governing body controlling the land was bound to pay the assessments from any funds available. The city charter imposed a tax limitation only to be exceeded by a two-thirds vote, and, along with the constitutional provision relied upon in this case, required an election for the incurring of an indebtedness not payable

out of the current revenues. The proposed assessment would have resulted in allotting 20.68 percent of the amount of the total bond issue to municipally owned property situated within one of eight zones found to be benefited by the project. The court stated, 'A survey of the authorities on the subject clearly shows that in the application of the prohibitive language of section 18 of Article 11 of the Constitution to the situation here presented at least two conditions must concur: First, that an indebtedness or liability be incurred by the city of Pasadena in excess of the income and revenue provided for the year in which it is incurred; and, secondly, that such indebtedness be incurred voluntarily on the part of the officers of the city having an official duty to perform in the matter. If these two conditions be present, the result is not that the indebtedness or liability may not be incurred at all, but that the assent thereto of two-thirds of the qualified electors of the city must be first obtained.' (204 Cal. at p. 273, [.])

The court continued, 'The first question, therefore, is this: Does the obligation assumed by the city, under the Acquisition and Improvement Act of 1925 and the proceedings in question, constitute an indebtedness or liability on the part of the city? The constitutional language is very broad. It is that no 'indebtedness or liability in any manner or for any purpose,' etc., shall be incurred except as in the section permitted.' (Id.) The court examined the provisions of the law which made the assessments an enforceable obligation against the governing body controlling the land, and which required it to pay the assessment installments from any funds available. The opinion concluded: 'It would be difficult to perceive a more direct obligation imposed on the city authorities to pay into the district bond fund the amount of the assessment chargeable against the city. It is conceded that the city's lands, although in form assessed for the improvement, may not legally be sold to satisfy the assessment in the manner provided for the sale of privately owned lands, or at all. The city's proportion of the acquisition cost must be paid into the district bond fund provided for by the act from the general funds of the city or from the proceeds of some general municipal tax levy. In any event, the taxpayers of the city as a whole bear the burden of the obligation thus incurred.' (Id. at p. 274, [.])

In response to the issue of voluntariness the court stated, 'It is argued that the petitioner's obligation to pay the assessment on its property is one imposed by law because section 41 of the act provides that when the municipally owned property is assessed the assessment tax levied thereon is an enforceable obligation against the governing body controlling the land. It is true that the statute so provides, but it does not follow therefrom that the city's liability thereunder is involuntary. The proceeding is instituted by the same governing body charged with the duty of providing the funds for the payment of the bonds. This governing body was under no compulsion to start the proceeding in the first instance. It was entirely optional with the city to proceed or not to proceed in the commencement thereof. Later it was likewise optional with said governing body to include in or exclude from the assessment the property belonging to the city. Acting voluntarily in both instances, the city elected to commence the proceeding and also to include the city property in the assessment. Under these circumstances it would seem idle to argue that the obligation thus assumed is imposed by the law and therefore involuntary.' (Id. at p. 276, [.])

City of Saratoga, supra, 24 Cal.App.3d at pp. 991-993.

E. The subject Unfunded Liability constitutes an obligation imposed by law

After carefully analyzing the parties' arguments and the law cited, the Court finds that the Unfunded Liability falls within the exception to the local debt limit for obligations imposed by law.

Under the Retirement Law, a contracting agency has a duty to pay pension funds as promised and earned. There is no doubt payments made by a city to CalPERS are a debt within the meaning of California Constitution, article XIII A, section 1, subdivision (b), wherein the term "any indebtedness" should be broadly so as to encompass "all obligations to pay money."

While it is true that there is no law specifically obligating Plaintiff to pay the payments constituting the Unfunded Liability, Compton Community College, supra makes clear that this is not of particular consequence. Whether a duty is imposed by law does not require that the exact amount of the

expenditure be set by law. Rather, the duty may be less specific than that, such as a constitutional duty to place a high importance on education or a statutory duty to employ teachers and pay them according to a set salary schedule. Likewise, Plaintiff here has a CalPERS contract obligating it to make contributions in order to fund the pensions of its employees. Moreover, the specific benefits being given to fire and police officers that have necessitated the issuance of the subject Refunding Bonds were approved by City voters in an election held in 1951.

The cases relied on by Defendants are easily distinguished. While Pension Obligation does set forth the interpretation that participation in CalPERS is a self-imposed obligation, it is important to note that the plaintiff in that case was the State itself and not a local contracting agency like Plaintiff in the case at bar. The Pension Obligation court emphasized that "[t]he Legislature [an arm of the State] retains the power to eliminate or amend the obligation, as it did in the 2004 pension reform legislation described above." (Pension Obligation, supra, 152 Cal.App.4th at p. 1405.) Plaintiff here, in contrast, has no power to eliminate or amend the obligation to fund pension benefits. The City's own voters directed it to join CalPERS in 1951. This distinguishing facts apply equally in the case of City of Pasadena.

As for County of Orange, that case does not support Defendants' position. The court in that case found that unfunded liabilities owed to CalPERS are not an "indebtedness" within the meaning of article XVI, section 18, subdivision (a) and thus not subject to the constitutional debt limit at all. In reaching this conclusion, the County of Orange court found in favor of the parties arguing against the application of the debt limit.

Furthermore, the County of Orange court relied on a previous Attorney General Opinion from 1982 in finding that an unfunded liability is not required to be reported on a government entity's balance sheet and, thus, not a "legally enforceable obligation." Plaintiff, however, has pointed to GASB rules 67 and 68-adopted in 2012-which require that unfunded liabilities be reported as a debt to the city and shown on a city's statement of net position.

The issue of prepayment and conclusion

Defendants admit that if the budget is balanced they would have no problem with Plaintiff issuing a bond to pay for only the unfunded liability for only the coming year. Defendants have taken issue with the fact that Plaintiff is seeking to pay for estimated future years' payments to CalPERS as well, arguing that CalPERS makes no demand to pay for future years' payments.

Defendants cite directly to the language of Article XVI, section 18, subdivision (a), which provides, in relevant part: "No...city...shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election..." (Cal. Const., art. XVI, § 18, subd. (a), emphasis added.) According to Defendants, the phrases "in any year" and "for such year" are essential because the subject Repayment Bonds are for projected expenses of future years.

On this issue, Defendants cite to the case *Starr v. City and County of San Francisco* (1977) 72 Cal.App.3d 164. In that case, the City of San Francisco financed a community center with a repayment agreement which, in addition to payments out of a special fund, required the city to make a lump-sum payment five years later out of the general fund. The city conceded that the potential lump sum indebtedness was \$14.1 million, but the court noted that the actual amount was "of unknown proportions." (Id. at pp. 170, 176.) The court went on to find that the agreement to make a lump sum final payment violated the requirement that an installment contract is valid only if the yearly payment is within the city's income and is supported by consideration in that year. (Id. at p. 172.)

The case at bar is distinguishable from *Starr* as the amount that is to be owed to CalPERS by Plaintiff is currently existing and has been precisely calculated. The CalPERS Actuary's most recent actuarial valuation reports have calculated a total Unfunded Liability of the Plaintiff under its Retirement Plans of

\$219,593,414 as of June 30, 2021. The CalPERS Actuary is the statutorily imposed authority for determining a contracting agency's CalPERS contribution. If CalPERS itself has identified that over \$219,000,000 worth of unfunded liability exists, then one can be very sure that it exists and will become due in the coming years. Additionally, Plaintiff has not agreed to pay what is owed as a lump sum in a future year. (See County of Orange, *supra*, 192 Cal.App.4th at p. 38, fn. 7.)

In conclusion, the Court finds that the subject Unfunded Liability here squarely falls within the "imposed by law" exception to the constitutional debt limit. As such, the Refunding Bonds, along with the Trust Agreement providing for the issuance of said Bonds, did not need to be subject to approval by two-thirds of the City of Oxnard's voters. Accordingly, Plaintiff's motion is granted, and Defendants' motion is denied.